

BEFORE THE TENNESSEE REGULATORY AUTHORITY

AT NASHVILLE, TENNESSEE

May 14, 2002

IN RE:

COMPLAINT OF XO TENNESSEE,
INC. AGAINST BELL SOUTH
TELECOMMUNICATIONS, INC.

and

COMPLAINT OF ACCESS INTEGRATED
NETWORKS, INC. AGAINST
BELL SOUTH TELECOMMUNICATIONS,
INC.

DOCKET NO.
01-00868

ORDER DENYING PETITION FOR CLARIFICATION OR RECONSIDERATION

This docket came before the Hearing Officer for consideration of *BellSouth Telecommunications, Inc.'s Petition for Clarification or Reconsideration* filed by BellSouth Telecommunications, Inc. ("BellSouth") on May 1, 2002 and the response thereto filed on May 2, 2002 by XO Tennessee, Inc. ("XO"), Access Integrated Network ("AIN"), and ITC^DeltaCom ("DeltaCom").

I. Positions of the Parties

BellSouth requests that the Hearing Officer clarify that the *Initial Order* only applies to BellSouth's offerings that provide "value to the customer purchasing a regulated service."¹ BellSouth further requests that the Hearing Officer clarify that the *Initial Order* does not apply "so broadly as to encompass circumstances where there is merely a linkage between regulated

¹ Docket No. 01-00868, *BellSouth Telecommunications, Inc.'s Petition for Clarification or Reconsideration*, p. 4 (May 1, 2002).

and unregulated services, or where a condition is imposed on the unregulated service, not the regulated service.”² As to the reconsideration aspect of the petition, BellSouth requests that in the event its understanding of the order is not the Hearing Officer’s intended result that the Hearing Officer reconsider the decision to “limit its impact to the types of offerings in which BellSouth provides non-tariffed value as a condition on the purchase of regulated services.”³

XO, AIN, and DeltaCom oppose any clarification or reconsideration of the *Initial Order* as requested by BellSouth. The parties contend that the petition improperly asks the Hearing Officer to render an advisory opinion on matters that are not the subject of this docket.⁴ Additionally, XO, AIN, and DeltaCom contend that BellSouth failed to describe the alternative factual scenarios in “sufficient detail to permit meaningful discussion.”⁵

II. Findings and Conclusions

The Hearing Officer concludes that the petition should be denied. AIN, XO, and DeltaCom accurately assert that BellSouth is asking the Hearing Officer to rule on a set of hypothetical facts. It is the opinion of the Hearing Officer that any clarification or reconsideration with such an aim in mind is beyond the authority delegated the Hearing Officer by the Tennessee Regulatory Authority (“TRA”).

At the October 23, 2001 Authority Conference, the TRA appointed General Counsel or his designee to act as Hearing Officer “to make findings of fact and conclusions of law, as necessary, and to render an initial decision on the merits of the Complaint.”⁶ The TRA also directed the Hearing Officer to determine whether Docket Nos. 01-00808 and 01-00868 should

² *Id.*

³ *Id.* at 4-5.

⁴ Docket No. 01-00868, *Response to BellSouth’s Petition for Clarification or Reconsideration*, p. 1 (May 2, 2002).

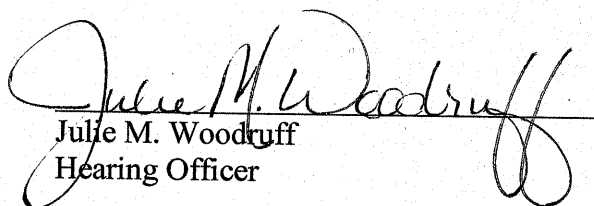
⁵ *Id.* at 2.

⁶ Docket No. 01-00868, *Order Appointing a Hearing Officer* (Nov. 7, 2001).

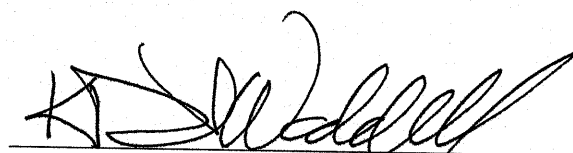
be consolidated.⁷ On November 6, 2001 the Hearing Officer entered an order consolidating the dockets.⁸ At a pre-hearing conference held on November 30, 2001, the Hearing Officer granted the *Motion to Amend Complaints* filed by XO and AIN.⁹ No party sought reconsideration or perfected an appeal of the Hearing Officer's decisions to consolidate the dockets or to grant the *Motion to Amend Complaints*. Based on this procedural history, it is reasonable to conclude that the authority delegated to the Hearing Officer by the TRA was limited to resolving only the subject of the complaints as amended. As such, it would be inappropriate for the Hearing Officer to render a decision as requested by BellSouth. For the foregoing reasons, the Hearing Officer finds that BellSouth's petition should be denied.

IT IS THEREFORE ORDERED THAT:

1. *BellSouth Telecommunications, Inc.'s Petition for Clarification or Reconsideration* filed by BellSouth Telecommunications, Inc. on May 1, 2002 is denied.
2. Any party aggrieved by the *Initial Order* of the Hearing Officer in this docket may file a Petition for Appeal with the Tennessee Regulatory Authority within fifteen (15) days from the date of this order.


Julie M. Woodruff
Hearing Officer

ATTEST:


K. David Waddell, Executive Secretary

⁷ *Id.*

⁸ See Docket Nos. 01-00808 & 01-00868, *Order*, pp. 5-12 (Nov. 6, 2001).

⁹ Docket No. 01-00868, *Order from November 30, 2001 Pre-Hearing Conference*, p. 8 (Dec. 31, 2001).